

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement )  
of the Surrendered License of: )

Brandon Michael Ross )

Case No.: 800-2017-030402

Physician's & Surgeon's )  
Certificate No: A 76782 )

OAH No.: 2018010334

Respondent )

**ORDER OF NON-ADOPTION  
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is sufficient to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Jillio-Ryan, 14661 Franklin Ave, # 150, Tustin, CA 92780. The telephone number is 714-424-9902.


To order a copy of the exhibits, please submit a written request to this Board.

**In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815-3831  
916-263-2451  
Attention: Dianne Richards

Date: April 30, 2018

  
Kristina D. Lawson, J.D., Chair  
Panel B

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of the Surrendered License  
of:

BRANDON MICHAEL ROSS,

Petitioner.

Case No. 800-2017-030402

OAH No. 2018010334

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 21, 2018, in San Diego, California.

Steven Zeigen, Attorney at Law, represented Brandon Michael Ross, petitioner, who was present throughout the administrative hearing.

Rosemary Luzon, Deputy Attorney General, appeared on behalf of the Attorney General pursuant to Government Code section 11522.

The matter was submitted on March 21, 2018.

**SUMMARY**

Petitioner has a long history of alcohol abuse and abuse of controlled and illegal drugs. Clear and convincing evidence established that petitioner may safely return to the practice of medicine under specific terms and conditions under the Uniform Standards for Substance-Abusing Licensees, to ensure public safety.

**FACTUAL FINDINGS**

*Disciplinary History and Petition to Revoke*

1. The Board issued Physician's and Surgeon's Certificate Number A 76782 to petitioner on Oct. 12, 2001.

2. On June 6, 2012, the Executive Director of the Medical Board filed an ex parte petition for an interim suspension of petitioner's license. The matter was heard on June 7, 2012, before Administrative Law Judge Robert W. Walker and an ex parte interim suspension order was issued that day. In support of the petition, complainant submitted a declaration from Mark Kalish, M.D. Dr. Kalish, based upon his review of various records, opined that petitioner suffered from a significant psychiatric condition that impaired his judgment and represented "an acute danger" to the public if he were to continue to practice medicine. Dr. Kalish stated that petitioner suffered from a "mixed substance abuse disorder which includes cocaine, marijuana, opiates and alcohol" and he had been unable to eliminate his use of these substances for any significant length of time "despite multiple attempts at treatment." Dr. Kalish added that petitioner's "drug use is so extreme (3½ g of cocaine per day) that it is hard to imagine that his mental state and physical state were not compromised during this treatment of patients."

3. On June 18, 2012, a noticed hearing for an interim suspension order was heard before Administrative Law Judge Mary Agnes Matyszewski. In a decision dated June 20, 2012, Judge Matyszewski issued an order that suspended petitioner's license pending a hearing on the merits.

4. On July 3, 2012, the Executive Director filed an accusation in the matter entitled *In the Matter of the Accusation Against Brandon Ross, M.D.*, Case No, 10-2012-221360. The accusation alleged eight causes for discipline and a cause for action under Business and Professions Code section 822, mental illness and/or physical illness affecting competency. In this accusation, complainant alleged that:

- Under the First Cause for Discipline, petitioner administrated controlled substances to himself in violation of Business and Professions Code sections 2227 and 2234;
- Under the Second Cause for Discipline, petitioner consumed alcohol and used dangerous drugs to such an extent or in a manner dangerous to himself or another person to the extent that his use impaired his ability to practice medicine safely.
- Under the Third Cause for Discipline, petitioner violated statutes regulating dangerous drugs or controlled substances.
- Under the Fourth Cause for Discipline, petitioner committed gross negligence in his practice of medicine when he took controlled substances for his own use; allowed a controlled substance lock box to be under the control of an unlicensed employee; failed to prepare for emergencies in his office by having an updated crash cart and being familiar with the crash cart, and because he was not Advanced Cardiac Life Support (ACLS) certified while performing conscious sedation of his patients.

- Petitioner committed repeated negligent acts in his care and treatment of patient S.S., a friend, including giving this person a prescription for hydrocodone<sup>1</sup> on February 11, 2012, without an examination or documentation and he failed to perform an appropriate prior examination on S.S. and did not document his care and treatment of S.S.
- Petitioner prescribed, dispensed or furnished dangerous drugs to S.S. without an appropriate examination.
- Petitioner failed to maintain adequate and accurate medical records
- Petitioner engaged in unprofessional conduct.
- In addition, the accusation alleged that under Business and Professions Code section 822, petitioner was unable to practice medicine safely because he was impaired due to a mental or physical illness affecting his competency.

5. Effective November 2, 2012, the Board adopted the Stipulated Settlement and Disciplinary Order petitioner signed on July 31, 2012. Petitioner agreed that the charges and allegations in the accusation established a prima facie case for disciplinary action against him.

The Stipulated Settlement and Disciplinary Order placed petitioner's license on probation for 10 years with a 120 day suspension, with the following terms and conditions: He was prohibited from ordering, prescribing, dispensing, furnishing or possessing controlled substances; he was required to surrender his Drug Enforcement Agency (DEA) certificate; he was to abstain from the use of controlled substances and alcohol; submit to biological fluid testing; and take a prescribing practices course, among other terms and conditions.

6. On October 8, 2013, under the terms of the Stipulated Settlement and Disciplinary Order, the Board issued a Cease Practice Order because petitioner failed to abstain from the use of alcohol and failed to cooperate with required biological fluid testing.

7. On October 22, 2013, the Executive Director filed the matter entitled *In the Matter of the Accusation and Petition to Revoke Probation Against Brandon M. Ross, M.D.* Case No. 8002013000208. The Executive Director filed this action after petitioner informed his board probation monitor that he had been drinking alcohol on April 2 and 3, 2013, and on August 12, 2013, and because on August 20, 2013, he tested positive for indicators of alcohol consumption and admitted on September 26, 2013, in a written statement that he was

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<sup>1</sup> Hydrocodone is a Schedule II controlled substance under Health and Safety Code section 11055 and a dangerous drug under Business and Professions Code section 4022.

drinking alcohol on those dates. On April 3, and September 10, 2013, he failed to report for his biological fluid testing.

Effective February 4, 2014, the Board adopted the Stipulated Surrender of License which petitioner signed on November 27, 2013. Petitioner admitted the complete truth and accuracy of each and every charge and allegation in the Accusation and Petition to Revoke Probation.

8. On February 3, 2017, petitioner filed a Petition for Penalty Reinstatement of Surrendered Certificate. Petitioner attached the following documents to the petition: his narrative statement and letters from his treating psychiatrist, John E. Milner, M.D.; his treating therapist, Duane E. Rogers, Psy.D., M.F.T.; Jerry Ayers, M.D.; Allison Ross, M.D.; Jin Yom, D.D.S.; Paul Weber, D.V.M.; John A.; and Candis Finlay. Petitioner also submitted proof of his participation at Alcoholics Anonymous (AA) and his personal attestation that he has averaged four or more meetings since July 2014, although he did not begin collecting signatures until July 2016. Petitioner also submitted proof of Continuing Medical Education (CME) courses he has taken.

#### *Petitioner's Testimony*

9. Petitioner graduated from University of California, Davis in 1994 and Tufts University School of Medicine in 2000. He was a medical intern at Scripps Mercy Hospital in 2000 and 2001 and opened Ross Cosmetic Medical Group in 2001 and Ross Medical Hair Restoration in La Jolla in 2004. Petitioner never held hospital privileges. After his license was revoked, petitioner was self-employed in 2014 in residential property rehabilitation. In 2015 he enrolled in law school at Concord University of Kaplan University.

Petitioner is divorced and has three children, ages 15, 12 and 10. He lives near his ex-wife, Allison Ross, M.D., and they share joint custody of their children. Petitioner, however, has physical custody of their oldest daughter who has a developmental disability. Petitioner's ex-wife provided a letter in support of his petition for reinstatement.

Petitioner described his substance abuse history as follows: In 2002, he became addicted to hydrocodone, an opioid, and over the next eight years diverted the drug from his office for his own use. He was taking the medication due to a bad back and was taking 20 to 30 tablets of hydrocodone daily. Petitioner told psychologist Carrie Jaffe, Ph.D., that, at the peak of his addiction, he was using 40 to 60 10/325mg Norco<sup>2</sup> pills on a daily basis. Dr. Jaffe wrote a report based on her substance abuse evaluation of petitioner dated March 14, 2018, which was admitted as administrative hearsay evidence in this hearing.

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<sup>2</sup> Norco (acetaminophen and hydrocodone), is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 and dangerous drug pursuant to Business and Professions Code section 4022.

At some point, petitioner started combining the medication with alcohol. In 2008 to 2009 petitioner started injecting 5 to 10 cc's of Demerol<sup>3</sup> every night. Petitioner came into possession of injectable Demerol at his office when he was giving the medication to a patient he was treating who had a severe chemical burn and was in pain. Due to injecting Demerol, petitioner developed rhabdomyolysis.<sup>4</sup>

In 2009 to 2010, he began using methadone in an effort to wean himself off the medication. He did this without medical supervision. In 2010, he started using cocaine, which he used for a year-and-a-half.

In 2008 to 2009, petitioner went to a detox center for a rapid detox from opiates. At this center he underwent an anesthesia induced procedure where he was administered Narcan to remove the opioid receptors to end the physical side effects. Petitioner did not participate in counseling.

In an effort to remain sober and to try to prevent himself from diverting drugs for his own use at his medical office, in 2010 he utilized a locked medication box. He gave the keys to this box to his unlicensed medical assistant, and this medical assistant was responsible for stocking the medication box and deciding what medications to order. However, this lockbox did not prevent petitioner from diverting hydrocodone for his own use. From September 2009 to January 2010, petitioner ordered a total of 7,000 hydrocodone tablets and was taking tablets from the lockbox for his own use. As noted, he was taking 20 to 30 hydrocodone tablets a day.<sup>5</sup> At the May 9, 2012, Health Quality Investigation Unit interview, petitioner admitted to investigators that he obtained the hydrocodone from the lockbox. When asked how he did this, he said he probably "did some weasely thing like you know, like wait until the lockbox was open, and then taken a bottle or something. . . but I, I don't recall how I did it."

To try to address his substance abuse problems, in July 2011, petitioner entered a rehabilitation center named Capo by the Sea on July 20, 2011. On July 26, 2011, he left the program against advice, and was readmitted on July 28, 2011. He said he sought treatment because his wife asked for a divorce. He failed to meet the program's treatment plan objectives and left the program on August 11, 2011. In September 2011, petitioner relapsed; he had been drinking three bottles of wine a day, taking 3½ grams of cocaine a day, and he showed up at his child's birthday party drunk. From September 14, 2011, to September 28,

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<sup>3</sup> Demerol, an opioid analgesic containing meperidine, is a Schedule II controlled substance under Health and Safety Code section 11055 and a dangerous drug under Business and Professions Code section 4022.

<sup>4</sup> Rhabdomyolysis is a condition which can result from drug abuse where damaged skeletal muscle breaks down rapidly. Symptoms may include muscle pains, weakness, vomiting, and confusion and can lead to kidney failure.

<sup>5</sup> Over a one year period 20 tablets a day is approximately 7,000 tablets.

2011, petitioner was an inpatient at Capo by the Sea. But, petitioner refused to stay for a longer time period and only partially met the program's treatment plan objectives.

10 Soon afterwards, petitioner spiraled out of control. On October 21, 2011, petitioner's estranged wife called San Diego Police to report that he threatened to kill himself with a handgun. His wife told police they were having marital problems due to petitioner's substance abuse problems and petitioner sent her a text message with pictures that included a picture of a gun on a table and a gun in his mouth with the message, "I will either be in the morgue this afternoon or an institution. . . my life is over. . . Nothing matters anymore."<sup>6</sup> Police located petitioner in a parking lot and after negotiations he surrendered to police. A search of his car found the handgun with ammunition, \$24,000 in cash, four Vicodin pills, and four unused hypodermic needles. Petitioner admitted to a therapist with the Police Emergency Response Team that he had consumed two bottles of wine the night before and about a quarter of an "eight ball" of cocaine around 6:00 a.m. He said he was suicidal because his wife had asked for a divorce and he had not slept in two days. Petitioner reported a history of depression and was prescribed Prozac to manage his condition.

Petitioner was placed under a Welfare and Institutions Code section 5150 hold until October 24, 2011, and then placed on an involuntary 14 day hold on October 25, 2011. After evaluation, he was discharged on October 26, 2011.

11. On January 19, 2012, petitioner enrolled in Pacific Assistance Group (PAG), a diversion program run by Duane Rogers, Psy.D. Dr. Rogers testified in this proceeding and his testimony is summarized immediately below. Petitioner agreed to random drug testing once a week, attend therapy sessions with other professionals twice a week, and attend a minimum of three AA meetings per week. As part of the program, an Interlock device was installed in his car that would not allow the car to start if it detected alcohol.

Petitioner dropped out of Dr. Rogers's program and began drinking again while he was under disciplinary probation. As noted above, on April 2 and 3, 2013, August 12, 2013, and August 20, 2013, he tested positive for indicators of alcohol consumption. On September 26, 2013, petitioner admitted in a written statement that he was drinking alcohol on these dates. On April 3, and September 10, 2013, he failed to report for his biological fluid testing.

12. In 2014, due to his alcohol use, he temporarily lost custody of his children. He described this as a "wake-up call" and reentered PAG, began seeing Dr. Milner for psychotherapy, and embraced the 12-step AA program. Since July 2014, he has been attending PAG, where initially he participated in group sessions twice a week, and now

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<sup>6</sup> The photo he sent his wife on October 21, 2011, was part of a monitoring system to ensure he was sober to have custody of his children. At the time, petitioner used a breathalyzer as part of his custody arrangement with his wife. When he used the breathalyzer he was required to send his wife a photo showing that he was taking the breathalyzer.

participates in group sessions once a week, per Dr. Rogers's recommendation. Since July 2014, under PAG, petitioner has been randomly tested for drugs and alcohol and, aside from a May 6, 2017, "slip," as Dr. Milner termed it, petitioner has been clean.

13. Petitioner last used illicit drugs in 2012. His "original" sobriety date for alcohol was July 30, 2014, but on May 6, 2017, he drank two glasses of alcohol during a dinner date and his sobriety date is now May 7, 2017. Petitioner explained that after he drank the two glasses of wine on May 6, 2017, he immediately regretted drinking and panicked because he dreaded the prospect of losing custody of his children, and called his sponsor the next day. On May 9, 2017, he went to the lab for a random urine screen as he was required to do under PAG. He took "fake pee" with him and then told the lab monitor that he didn't want to be tested and showed the monitor the fake pee. The testing report termed the result "adulterated." Two days later he tested again and the test was negative. He called Drs. Milner and Rogers and, as petitioner said, Dr. Milner termed it a "slip," as opposed to a relapse. Since that date he has had no more slips.

14. Petitioner stated that before 2014 he wasn't really committed to the "program." He said he likes life in sobriety more than life when he was using. Now he is fully committed to being sober and has worked hard at recovery. Petitioner has worked the steps twice, is working the steps a third time, and is on Step 9. He has a sponsor who wrote a letter on his behalf to whom he speaks regularly. Since July 2014, he attends AA meetings four to five times a week, although he did not start obtaining attendance sheets until July 2016. In July 2017, he was unable to obtain attendance sheets because his daughter switched schools and the start time of the school changed. As a result, he arrives 15 minutes late at the AA meetings and the organizer will not sign the sheets of persons who arrive late.

15. Petitioner emphasized that now that he is sober, he is happier, able to appreciate the little things, and as part of his recovery, he believes that it is important to give back. In this regard, he actively participates as a volunteer at his children's school where he is chairman of the School Site Council and representative on the District Advisory Committee. He has also been a judge for the annual Speech Contest for the past two years, attended several field trips, and taught a Gifted and Talented class last year for students after school.

Petitioner also has developed a good relationship with his ex-wife to raise their children and is fully engaged in the raising of his children. After he lost his license, he tried rehabilitating houses for sale and entered law school, which he completed, and is in the process of taking the bar examination.

16. Since 2016, petitioner has completed 1,000 CME hours and has attempted to remain current in hair restoration. He has also become ACLS certified. Should his license be reinstated, petitioner would like to practice hair restoration or maybe do some work in addiction medicine. He described working in addiction medicine as a way to give back.



17. When asked how he can provide assurance that he won't "slip" again, petitioner responded that, consistent with AA's philosophy of recovery, in AA you live one day at a time and do that daily to ensure your sobriety, and he absolutely intends to not have slips. He added that he will not use today or any day. He said that he understands that if his license is reinstated there will be testing conditions and he would accept such conditions.

18. Petitioner's testimony was fully credible. He took full responsibility for his conduct, acknowledged his misconduct, and answered questions in a direct and forthcoming manner. He gave a complete, detailed, and thorough account of his history of drug and alcohol use since 2002, his multiple unsuccessful efforts at recovery, and the cost of his drug and alcohol abuse to himself, his family and those around him. He credibly testified to his plans for sustained recovery and his commitment to following a drug and alcohol free lifestyle. His testimony was substantiated by evidence in the record as a whole.

*Testimony of John Milner, M.D.*

19. Dr. Milner has been licensed to practice medicine since 1961, has practiced psychiatry since 1975, and is board certified in addiction medicine.

Dr. Milner started treating petitioner weekly in 2012. At the time, petitioner was suffering from severe alcoholism and post-traumatic stress disorder (PTSD). Dr. Milner considers petitioner's condition stable and in remission.

Dr. Milner agreed with Dr. Jaffe's comment in her report that petitioner's road to recovery has been difficult to achieve. Dr. Milner has seen many people who are unable to achieve recovery. He said that petitioner has made a complete "lifestyle change," is very involved support groups and, as a result of his sobriety, is fully engaged with his children. He has an excellent relationship with them, is involved in their school, and he has been an effective co-parent with his ex-wife. As Dr. Milner explained, what is significant is that petitioner has hope, is active, and is dedicated to helping others.

Dr. Milner discussed petitioner's May 6, 2017, use of alcohol. He termed it a "slip" as opposed to a "relapse." Dr. Milner stated that alcoholism is a chronic disease and when a person relapses they "give up." Instead of giving up, petitioner called Dr. Milner and was "devastated." Petitioner told him, "My God I can't believe I did it."

Dr. Milner believes that petitioner is safe to return to the practice of medicine with precautions in place, including that he continue to treat with Dr. Rogers and submit to random labs for six months.

20. Dr. Milner's testimony was credible and supported by evidence in the record.

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*Testimony of Duane Rogers, Psy.D., M.P.H., M.A., M.F.T.*

21. Dr. Rogers, Psy.D., M.P.H., M.A., and M.F.T., is a California licensed therapist, the area administrator for PAG and Maximus, Inc., and a contracted group facilitator for boards licensing health care professionals. Dr. Rogers holds Master's and Doctoral degrees in marriage and family therapy, and for the last 30 years, has organized and facilitated diversion groups. He presently runs eight groups for doctors and other health professionals; each group meets twice a week.

Dr. Rogers's testimony is summarized as follows and supplemented by a report dated February 3, 2017, which he wrote in support of petitioner's petition, and a quarterly report written on February 10, 2018, which related to petitioner's custody of his children. Both reports were received into evidence.

Dr. Rogers believes that petitioner is now "solidly" in full recovery. He has been fully participating in PAG, and is committed to sober recovery without signs of present relapse. Since he returned to PAG in 2014, Dr. Rogers described petitioner as a different person, more committed to recovery and a model participant at meetings where he fully participates with the other participants.

As a feature of petitioner's recovery, Dr. Rogers stressed that petitioner has undergone a character change and this character change is a feature of his recovery. As he explained, character change comes about as "gifts of the program" and this change of character is typical of a person who is working the program and has worked the program several times, as petitioner has done. Petitioner now has an improved relationship with his ex-wife, and is engaged in the education of his children, and involved in volunteer work at their school. Dr. Rogers commented that it was significant, as proof of this character change, that petitioner's ex-wife wrote a letter on petitioner's behalf in support of his petition for reinstatement.

Dr. Rogers did not change his opinion regarding petitioner's recovery because petitioner drank wine on May 6, 2017. Dr. Rogers concurred with Dr. Milner's assessment that petitioner's May 6, 2017, use of alcohol was not a relapse, though initially he was concerned that petitioner had relapsed. He expressed this concern in an email he wrote to Dr. Milner, but ultimately he agreed with Dr. Milner that petitioner did not suffer a relapse.

Dr. Rogers believes that petitioner is safe to resume the practice of medicine. He based his opinion on petitioner's extensive relapse recovery plan, which consists of individuals in his support group and his ex-wife. These individuals, Dr. Rogers said, will know if he is using. He added that petitioner has strong incentive to remain sober because he is "tired of being tired" and losing custody of his children.

As precautions, Dr. Rogers recommended that petitioner undergo continued monitoring with urine testing, and continue his current level of program involvement.

22. Dr. Rogers's testimony was credible and supported by evidence in the record.

*Petitioner's Character Evidence*

23. Petitioner submitted into evidence the letters from the following persons: Jerry Ayers, M.D.; Allison Ross, M.D.; Jin Yom, D.D.S., Paul Weber, D.V.M.; John A.; Candis Finlay; the principal at his children's school; and his daughter. In addition, petitioner submitted a report from Carrie Jaffe, Ph.D. These letters were received as administrative hearsay and are considered to the extent they supplement or explain evidence in the record.

Dr. Ayers is an Addiction Medicine Physician and observed petitioner in the PAG meetings over a two year period as a Group Monitor. In his letter dated January 24, 2017, Dr. Ayers stated that petitioner is fully committed to recovery, participates fully in programs and he has seen changes in petitioner that he attributes to accepting his illness and actively treating it.

Dr. Ross, petitioner's ex-wife, in her letter dated January 10, 2017, stated that petitioner has reached a turning point in his illness and is completely committed to his sobriety and actively practicing the 12 steps. Dr. Ross attributes this turning point to petitioner fully coming to terms with his illness. She further stated that petitioner has been a great support for their children, and is involved in every aspect of raising them.

Dr. Jaffe in her report dated March 14, 2018, stated that petitioner has undergone a dramatic recovery that appears to be evident in every part of his life. He has worked a recovery program with passion, integrity, and the commitment to achieve long-term recovery. He has shown significant character change that a strong commitment to the 12 step program is expected to produce.

Dr. Yom has participated with petitioner in the PAG meetings. In his letter dated January 16, 2017, he stated that petitioner has created a "rock solid program of recovery" and he has never met anyone who "walks the walk" of recovery more than petitioner. Dr. Yom is very grateful for the guidance and support petitioner has offered him.

Dr. Weber has also participated with petitioner in the PAG meetings. In his letter dated January 31, 2017, Dr. Weber also expressed gratitude for petitioner's help in achieving recovery. Dr. Weber stated that petitioner has given him hope that his life will continue to improve if he follows the suggestions in the pages of AA. He described petitioner as a man of true character who despite his own struggles, has come to a whole new outlook and perspective on life.

John A. has been petitioner's sponsor for three years. In his letter dated February 2, 2017, he described petitioner as a tough nut to crack who eventually became "tired of being tired." Petitioner became committed to recovery because he loves his children more than his own life. Petitioner reached rock bottom after his wife took his children and he was then willing to listen and share at meetings. He became honest and a better person. As he put it,

he did this “big time.” For the last two and half years petitioner has been an ideal person to sponsor and petitioner has helped John A. more that he has helped petitioner. Petitioner has changed everything about the way he lives his life and he works the steps and practices recovery in all his daily rituals. As an example, John A.’s cousin had electrical problems at his house and couldn’t afford an electrician. Petitioner went to John A.’s cousin’s house, spent eight to 10 hours figuring out how to correct the problem, and replaced the entire fuse box. He refused to allow John A.’s cousin to even reimburse him for the parts he purchased. John A. described petitioner as a humble guy now and petitioner appreciates everything more now that he is in solid recovery. John A. recommends the Board reinstate his license.

Candis Finlay is petitioner’s mother. In her letter dated January 19, 2017, Ms. Finlay stated that she has seen petitioner change for the better in many ways and cited his commitment and dedication to his children.

Petitioner’s 14-year old daughter, in her letter dated January 9, 2017, wrote that petitioner is very involved in schoolwork, is very fun and knows what she and her siblings like to do. He picks her and her siblings up after school and is never late.

The principal at petitioner’s children’s school detailed petitioner’s sustained volunteer work at the school, consistent with petitioner’s testimony detailed above.

#### *The Parties’ Arguments*

24. Petitioner asserted that he has demonstrated a sustained four year period of sobriety, aside from the slip, and his license should be reinstated consistent with the evidence presented in this proceeding. Petitioner stated that he would accept conditions the Board imposed on his license. He said that he understands that if he slips this could cause his license to be revoked.

The Deputy Attorney General expressed serious concerns about petitioner having his license reinstated based on petitioner’s troubling history, repeated relapses and unsuccessful efforts at recovery. The Deputy Attorney General pointed out that petitioner drank alcohol three months after he filed his petition for reinstatement. With these concerns noted, the Deputy Attorney General did not recommend that petitioner’s petition be denied but, instead, asked that if petitioner’s license is reinstated that the following terms and conditions be imposed: 10 years’ probation and terms, conditions under the Uniform Standards for Substance Abusing Licensees under California Code of Regulations, title 16, sections 1361 and 1361.5, and requirements that petitioner be barred from prescribing controlled substances, surrender his DEA permit, require that he take prescribing practices and ethics courses, and that optional conditions 18, 20, 22, and 23 under the Board’s disciplinary guidelines be imposed.

In reply, petitioner noted that it is not necessary that petitioner be placed on 10 years’ probation and barred from prescribing controlled substances to ensure public protection, and petitioner has taken ethics and prescribing courses.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. In a proceeding for the restoration of a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.)

### *Statutory and Regulatory Authority*

2. Business and Professions Code section 2307 provides in part:

(a) A person whose certificate . . . has been revoked . . . may petition the board for reinstatement or modification of penalty

...

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board . . . which shall be acted upon in accordance with Section 2335.

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . . The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary. . . .

3. California Code of Regulations, title 16, section 1359 provides:

(a) A petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division.

(b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.

4. California Code of Regulations, title 16, section 1359 states, in part:

When considering a petition for reinstatement . . . pursuant to the provisions of Section 11522 of the Government Code, the division . . . shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] ... [¶]

(e) Evidence, if any, of rehabilitation submitted by the applicant.

### *Rehabilitation*

5. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of a petitioner's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

An alcoholic's rehabilitation is almost universally predicated on a choice to confront his problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. (*In re Menna*, supra, at 951.) Rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if three elements are established: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the individual has undergone a meaningful and sustained period of rehabilitation. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

### *The Board's Disciplinary Guidelines*

6. Protection of the public is the Board's highest priority. Consistent with this duty, the Board has adopted guidelines to appropriately discipline licensees and ensure that they can practice medicine safely. In 2015, the Board supplemented its guidelines when it adopted the Uniform Standards for Substance Abusing Licensees under California Code of Regulations, title 16, sections 1361 and 1361.5.

7. California Code of Regulations, title 16, section 1361 provides in part:

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation – for example:

the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee. . . .

8. California Code of Regulations, title 16, section 1361.5 provides in part:

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1361 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee: (1) Clinical Diagnostic Evaluations and Reports; [¶] (2) Notice of Employer or Supervisor Information; [¶] (3) Biological Fluid Testing; [¶] (4) Group Support Meetings; [¶] (5) Worksite Monitor Requirements and Responsibilities; [¶] and (6) The licensee must remain in compliance with all terms and conditions of probation. . . .

*Disposition and Evaluation Regarding Terms and Conditions*

9. Petitioner is a substance-abusing licensee. His history of alcohol and drug abuse is extensive and harrowing. Over a 12 year period, beginning in 2002, soon after he was licensed in 2000, he used and abused alcohol, legal and illegal drugs. In 2002 he became addicted to hydrocodone, he subsequently injected Demerol, used methadone and cocaine and abused alcohol. From his medical practice, he diverted large quantities of drugs for his own use. Over this 12 year time period, petitioner did not seek counseling and engaged in a misguided effort to treat himself. Only after his life spiraled out of control on October 21, 2011, and after multiple unsuccessful efforts at recovery, did petitioner embrace counseling and treatment. Except for the May 6, 2017, incident where he had two glasses of wine, petitioner has been drug and alcohol free since July 2014. The fact that petitioner drank alcoholic beverages three months after he filed for reinstatement of his license,



knowing the possible cost of such a slip, shows that he is not fully recovered and calls into question his ability to practice medicine safely.

Notwithstanding this concern regarding his May 6, 2017 use of alcohol, considering the evidence as a whole, petitioner has had a sustained period of recovery since July 2014 and is committed to recovery. He understands that if he slips while on probation he may jeopardize his ability to practice medicine again. Dr. Rogers and Dr. Milner testified convincingly to his recovery and numerous individuals attested that petitioner is committed to rehabilitating himself, working the program, and living a sober lifestyle.

Thus, clear and convincing evidence established that petitioner is sufficiently rehabilitated and he can practice medicine safely with terms and conditions, consistent with the Uniform Standards for Substance-Abusing Licensees, which will ensure public protection. These terms and conditions include a term of probation of seven years, a prohibition against petitioner operating as a solo practitioner, and requirements that petitioner continue to participate in psychotherapy and support groups and submit to biological fluid testing as directed. Considering the terms and conditions that are imposed against petitioner's license under the Uniform Standards for Substance-Abusing Licensees, and the evidence of the courses petitioner has completed, it is not necessary, in order to ensure public protection, to impose the Deputy Attorney General's recommended condition that petitioner be prohibited from prescribing controlled substances and surrender his DEA permit. Under the imposed terms and conditions, petitioner will be subject to a rigorous program of monitoring by multiple individuals to ensure he is drug and alcohol free and practicing medicine safely.

## ORDER

The Petition to Reinstate Physician's and Surgeon's Certificate No. A 76782 of Michael Brandon Ross is granted. Physician's and Surgeon's Certificate No. A 76782 issued to Michael Brandon Ross is reinstated, revoked, the revocation stayed, and placed on probation for seven (7) years on the following terms and conditions:

### 1. Clinical Diagnostic Evaluations and Reports

Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing

evaluations of physicians and surgeons with substance abuse disorders, and is approved by the board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to himself or herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until he has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Petitioner shall not engage in the practice of medicine until notified by the board or its designee that he is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the board if he is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the board or its designee.

## 2. Notice of Employer or Supervisor Information

Within seven (7) days after petitioner is notified by the board or its designee that he is fit to practice medicine safely, petitioner shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the petitioner has medical staff privileges.

## 3. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the board or its designee. The board may order a petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, petitioner shall be subject to 36 to 104 random tests per year. Nothing precludes the board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, petitioner shall contract with a laboratory or service, approved in advance by the Board or its designee, which will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the board within seven (7) business days of receipt of the specimen. The board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the petitioner to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the petitioner holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the board and petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself or herself a prohibited substance, the board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a petitioner's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by petitioner and approved by the board, alcohol, or any other substance the petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in section 1361.52(a), and the board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the board determines are necessary for public protection or to enhance petitioner's rehabilitation.

#### 4. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, petitioner shall submit to the board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with petitioner within the last five (5) years. Petitioner's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the board or its designee showing petitioner's name, the group name, the date and location of the meeting, petitioner's attendance, and petitioner's level of participation and progress. The facilitator shall report any unexcused absence by petitioner from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

#### 5. Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) calendar days of notification by the board or its designee that he is fit to practice medicine safely, petitioner shall submit to the board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the board or its designee, a person in a position of authority who is capable of monitoring the petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board or its designee. If it is impractical for anyone but petitioner's employer to serve as the worksite monitor, this requirement may be waived by the board or its designee, however, under no circumstances shall petitioner's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of petitioner's disciplinary order and agrees to monitor petitioner as set forth by the board or its designee.

Petitioner shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the board or its designee, but not less than once per week; interview other staff in the office regarding petitioner's behavior, if requested by the board or its designee; and review petitioner's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the board and petitioner's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the board's normal business hours, the verbal report shall be made to the board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board or its designee which shall include the following: (1) petitioner's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by petitioner. Petitioner shall complete any required consent forms and execute agreements with the approved worksite monitor and the board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, petitioner shall, within five (5) calendar days of such resignation or unavailability, submit to the board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If petitioner fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

#### 6. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If petitioner commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the board shall take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of petitioner;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at petitioner's expense;

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the board's authority to revoke petitioner's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.



## 7. Controlled Substances - Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

## 8. Alcohol - Abstain From Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The petitioner shall not resume the practice of medicine until the final decision on an accusation and/or a petition to revoke probation is effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to

cease practice. If the petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

#### 9. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The board or its designee may require petitioner to undergo psychiatric evaluations by a board-appointed board certified psychiatrist. If, prior to the completion of probation, petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

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#### 10. Notification

Petitioner shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

#### 11. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, petitioner is prohibited from supervising physician assistants and advanced practice nurses.

#### 12. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

#### 13. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

#### 14. General Probation Requirements

##### Compliance with Probation Unit

Petitioner shall comply with the board's probation unit.

##### Address Changes

Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the board or its designee. Under

no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

#### Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence unless the patient resides in a skilled nursing facility or other similar licensed facility.

#### License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

#### Travel or Residence Outside California

Petitioner shall immediately inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

#### 15. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice, throughout the term of probation.

#### 16. Non-practice While on Probation

Petitioner shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a petitioner residing outside of California, will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations.

#### 17. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

#### 18. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### 19. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

## 20. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

DATED: April 13, 2018

DocuSigned by:

*Abraham Levy*

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ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings